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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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09/755,060 01/08/01 WOOD

J BAYER-1 D1

EXAMINER

023599 HM22/0411
MILLEN, WHITE, ZELAND & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

HIGHEST UNIT	PAPER NUMBER
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1626

DATE MAILED:

04/11/01

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS**OFFICE ACTION SUMMARY**☐ Responsive to communication(s) filed on _____☐ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).**Disposition of Claims**

- ☒ Claim(s) 18 TO 31 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 18 TO 31 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 1626

Receipt is acknowledged of the preliminary amendment filed January 8, 2001, which has been entered in the file.

Proposed claims 19 to 3 have been renumbered as claims 18 to 31 as per Rule 37 CFR 1.126 in order to preserve consecutive numbering claims in the application since there were on 17 original claims filed in this application.

~~(8.11) Claim, drawn to, classified in class, subclass.~~

~~**Form Paragraph # 8.11 has inserts and there are no inserts on your draft.**~~

~~(8.31) Claim rejected under 35 U.S.C. 101 as claiming the same invention as that of claim of prior U.S. Patent No. This is a double patenting rejection.~~

~~**Form Paragraph 8.31 also has inserts but none are on your draft**~~

Insertion at an appropriate place therein of the current status of the parent application mentioned on page 1 of the specification is required.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1626

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 18 to 31 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 to 18 of prior U.S. Patent No. 6,187,799. This is a double patenting rejection.

No claim is allowed.

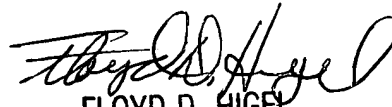
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Floyd D. Higel whose telephone number is (703) 308-4530. The examiner can normally be reached on Tuesday to Friday from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph McKane, can be reached on (703) 308-4537. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7921.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Higel:mv

April 9, 2001


FLOYD D. HIGEL
PATENT PRIMARY EXAMINER
ART UNIT 1626